
LEGAL GUIDANCE

SALE OR EXCHANGE OF MEDICAL ASSETS

Nothing man-made lasts forever. During the course of normal operations, it is inevitable that the managers of the Navy's Medical Treatment Facilities (MTF) and Dental Treatment Facilities (DTF) will become the custodians of personal property that can no longer be used safely. Ranging from expired pharmaceuticals and plasma to items of medical equipment that have become obsolete or unserviceable, this property, while not excess to the Navy's needs, requires replacement. In an effort to keep expenditures of the funds available for new supplies to a minimum or to expand their purchasing power, MTF/DTF officials may be tempted to exchange or sell off the old items in their possession. However, this is an area where caution is warranted, and obtaining the advice of legal counsel in advance is advisable.

Per subpart 217.70 of the Defense Acquisition Regulation Supplement (DFARS), the Navy has the legal authority to exchange certain types of Government-owned assets concurrent with the acquisition of similar items of property. In such transactions, the exchange allowance constitutes a trade-in credit and must be applied against the purchase price of replacement property being acquired at the same time. The categories of property eligible for exchange and the applicable procedural requirements are described in DODINST 4140.51.

In contrast, Navy officials generally do not have the legal authority to sell Government-owned materiel in their custody, retain the proceeds generated by the sale, and use those proceeds to purchase other goods at some future time. Absent special statutory authority, this course of action is considered by Congress to be an unauthorized augmentation of appropriated funds and is prohibited. Accordingly, any cash received from the sale of Navy medical supplies or equipment would have to be deposited in the U.S. Treasury as miscellaneous receipts. Neither the MTF/DTF nor the Navy would be allowed to retain or expend them.

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